

Owens, Mariejr

From: Owens, Mariejr
Sent: Monday, November 19, 2018 8:58 AM
To: Steven Himmelfarb
Cc: mohammad@himmelco.com; captainmarkj@gmail.com; Owens, Mariejr
Subject: RE: Sharks Cove Marina

Mr. Himmelfarb,

I haven't heard back from you or your representative regarding resolution of the Sharks Cove Marina matter. Can you please let me know your availability today and Tuesday and Wednesday of this week to discuss?

For your information and use, below is a copy of the email I sent to you with the penalty policy and proposed penalty.

From: Owens, Mariejr
Sent: Thursday, October 04, 2018 3:46 PM
To: Steven Himmelfarb <steven@himmelco.com>
Cc: mohammad@himmelco.com; captainmarkj@gmail.com; Owens, Mariejr <Owens.Mariejr@epa.gov>
Subject: RE: Sharks Cove Marina

As promised, attached is a copy of the proposed penalty for Sharks Cove Marina facility for violations of the Delaware Regulations Governing Underground Storage Tanks. For your information and use, below is a link to the UST penalty policy dated November 14, 1990 which guides how penalties are applied with regard to UST violations.

<https://www.epa.gov/sites/production/files/2014-02/documents/d9610.12.pdf>

In an effort to continue moving forward regarding this matter, please contact me no later than Thursday, October 25, 2018 to indicate if Dingo LLC and Sharks Cove Marina are interested in pursuing a settlement. If you have any questions or require additional information, please feel free to contact me at 215-814-3384 or reply to this email. FYI, I will be in the office next week and will be traveling the following week. During the week of October 15, 2018 since I will be traveling, it may take a day or so for me to return your call or email.

Marie Owens Powell
Compliance/Enforcement Officer

From: Steven Himmelfarb [mailto:steven@himmelco.com]
Sent: Wednesday, October 03, 2018 4:55 PM
To: Owens, Mariejr <Owens.Mariejr@epa.gov>
Cc: Yeany, Philip <Yeany.Philip@epa.gov>; mohammad@himmelco.com; captainmarkj@gmail.com
Subject: RE: Sharks Cove Marina

Marie,

I tried calling you but it appears your phone system is down.

While I appreciate your follow up, I still do not understand why you need information on the LL entity or the threshold business terms of the lease. First, I need to correct the assumption that the LL entity is non-profit. The LL is a single purpose LLC owned in entity by a trust (I am the trustee) and said trust donates its profits to qualified non-profits. While I'm correcting this assumption, I'm still stuck for why and how this is relevant. I'm fine sharing the section of the lease that deals with the delineation between LL and tenant responsibilities as it relates to the underground storage tank and other environmental concerns, but don't understand how the highly confidential and sensitive business terms of the lease are relevant and moreover I do have concerns about the lease being discovered as part of some future FOIA request.

Please take my note in the spirit its intended. The LL wants to be fully compliant with the EPA and more importantly I want to make sure our tenant (cc'd on this note) is fully compliant with the EPA as they are the frontline operators day to day. I sense your request is because the tenant is not fully complaint so now the EPA is bringing the LL into the mix, but that is me trying to read between the lines as the communications to date are less than clear.

Perhaps easier to speak than continued back and forth e mail. I need an understanding "why" and the how the requested information is going to be utilized, before I comply.

My cell is 917.541.8748.

Thanks, steve

Steven Himmelfarb
Himmelfarb Commercial, Inc.
202.595.9700 (p)

From: Owens, Mariejr <Owens.Mariejr@epa.gov>

Sent: Wednesday, October 3, 2018 4:18 PM

To: Steven Himmelfarb <steven@himmelco.com>

Cc: Yeany, Philip <Yeany.Philip@epa.gov>; mohammad@himmelco.com; captainmarkj@gmail.com; Owens, Mariejr <Owens.Mariejr@epa.gov>

Subject: RE: Sharks Cove Marina

Mr. Himmelfarb,

As you will recall, EPA inspected the Sharks Cove Marina facility at 57 Madison Avenue, Fenwick Island, Delaware on August 28, 2017. For your information, I have attached an electronic copy of the report from EPA's inspector setting out what she found during the inspection.

Section 9005 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6991d, requires the owners and operators of underground storage tanks to provide information that EPA requests related to the tanks. As a follow-up to the inspection of the facility, EPA sent Information Request Letters (IRLs) to Mr. Jurist. IRLs are one way EPA uses its Section 9005 information gathering authority. EPA uses the IRLs as part of an effort to make final compliance determinations with regard to Underground Storage Tank facilities. So that EPA can complete its final compliance determinations in this matter, please provide copies of the following:

- Documentation supporting Dingo LLC's claim of non-profit status;
- Incorporation documentation related to Dingo LLC;
- The lease agreement between Sharks Cove Marina and Dingo LLC; and
- Any documentation demonstrating the differentiation between ownership of the underground storage tank, piping and ancillary equipment.

You are entitled to assert a claim of business confidentiality covering any part or all of the submitted information in the manner described in volume 40 of the Code of Federal Regulations (CFR), Section 2.203(b). Information subject to the claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 CFR Part 2, Subpart B. Unless a business confidentiality claim is asserted at the time the information is submitted, EPA may make such information available to the public without further notice to you.

Please provide the above requested information no later than Wednesday, October 10, 2018. You can provide documents via email or mail to me at the following address:

Marie Owens Powell
US EPA Region 3 (3LC31)
1650 Arch Street
Philadelphia, PA 19103

If you have any questions, please feel free to contact me at 215-914-3384.

Marie Owens Powell
Compliance/Enforcement Officer

From: Steven Himmelfarb [<mailto:steven@himmelco.com>]
Sent: Friday, September 28, 2018 11:11 AM
To: Owens, Mariejr <Owens.Mariejr@epa.gov>
Cc: Yeany, Philip <Yeany.Philip@epa.gov>; mohammad@himmelco.com; captainmarkj@gmail.com
Subject: RE: Sharks Cove Marina

Thanks for the speedy reply. I would like a more comprehensive assessment of what is going on and why the EPA is seeking such an extensive list of supporting documentation before we comply with your request. Again, not pushing back on the request, I simply don't understand 'why' and await the explanation.

Thanks, Steve

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Subject: RE: Sharks Cove Marina

Mr. Himmelfarb,

EPA is currently investigating the areas of concern at the Sharks Cove Marina. I will be able to respond more fully after I meet with the EPA attorney, Phil Yeany early next week.

Thanks

Marie Owens Powell

From: Steven Himmelfarb [<mailto:steven@himmelco.com>]
Sent: Friday, September 28, 2018 10:56 AM
To: Owens, Mariejr <Owens.Mariejr@epa.gov>
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Subject: RE: Sharks Cove Marina

Marie, in my role as Trustee of Dingo LLC we will cooperate with your request and follow up with documents under separate e mail. Before we respond with information, I'd greatly appreciate if you could please reply all with an updated status on the EPA's investigation. The information request beyond what we've ever been asked before and I want to understand the current status and necessity of the requested information.

Many thanks,

Steven Himmelfarb
Trustee, Dingo LLC

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Cc: Owens, Mariejr <Owens.Mariejr@epa.gov>; Yeany, Philip <Yeany.Philip@epa.gov>
Subject: Sharks Cove Marina

As a follow up to EPA's investigation of the Sharks Cove Marina facility located at 57 Madison Avenue, Fenwick Island, Delaware please provide copies of the following:

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Attachments: SHARKS COVE PENALTY CALC.doc

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UST Compliance/Enforcement Officer
215-814-3384

Sharks Cove Marina & Dingo LLC

Count I (Failure to perform line tightness testing)	\$13,958
Count II (Failure to perform line leak detector testing)	\$13,958
Count III (Failure to provide UST financial responsibility)	\$8,511
TOTAL	\$36,427

Sharks Cove Marina & Dingo LLC
COUNT I

Failure to perform line tightness testing (LTT) as required by DRGUST Part B 1.09A(4).

Extent of Deviation/Potential for Harm: Major/Major

SCD Matrix Value: \$1500

Per UST Matrix Value (per UST): \$1500

Dates of Noncompliance: June 9, 2015 through March 8, 2018

Days of Noncompliance: 1003 days

Days of Noncompliance Multiplier: 4.5

Environmental Sensitivity Multiplier: Unknown

Violator Specific Adjustments: n/a

Adjusted Matrix Value:	\$1,500
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\$1500 x 1 LTT x 4.5 DNC x 1.84767 Inflation	12,472
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Gravity Based Penalty	\$12,472
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Economic Benefit	\$1,486
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Total Penalty	\$13,958
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Sharks Cove Marina & Dingo LLC
COUNT II

Failure to perform line leak detector testing (LLD) as required by DRGUST Part B 1.09A(3).

Extent of Deviation/Potential for Harm: Major/Major

SCD Matrix Value: \$1500

Per UST Matrix Value (per UST): \$1500

Dates of Noncompliance: June 9, 2015 through March 8, 2018

Days of Noncompliance: 1003 days

Days of Noncompliance Multiplier: 4.5

Environmental Sensitivity Multiplier: Unknown

Violator Specific Adjustments: n/a

Adjusted Matrix Value:	\$1,500
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\$1500 x 1 LLD x 4.5 DNC x 1.84767 Inflation	12,472
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Gravity Based Penalty	\$12,472
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Economic Benefit	\$1,486
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Total Penalty	\$13,958
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Sharks Cove Marina & Dingo LLC

COUNT III

Failure to provide financial responsibility for an underground storage tank as required by DRGUST Part F.

Extent of Deviation/Potential for Harm: Major/Moderate

SCD Matrix Value: \$750

Per UST Matrix Value (per UST): \$750

Dates of Noncompliance: January 17, 2015 to the present (September 30, 2018)

Days of Noncompliance: 1352 days

Days of Noncompliance Multiplier: 5.5

Environmental Sensitivity Multiplier: Unknown

Violator Specific Adjustments: n/a

Adjusted Matrix Value: \$750

INFLATIONARY CALCULATIONS

01-17-15 to 11-02-15 = 290 days = 21%

\$750 x 1 Facility x 5.5 DNC x x 21% x 1.4853 Inflation 1,286

11-03-15 to 09-30-18 = 1030 days = 79%

\$750 x 1 Facility x 5.5 DNC x x 79% x 1.84767 Inflation 6,021

Gravity Based Penalty \$7,307

Economic Benefit – Deminimis 1,204

Total Penalty \$8,511